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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,825	01/21/2004	Masaya Shimoji	04028 /LH	6191
1933	7590	08/30/2005	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC			TRAN, HUAN HUU	
220 5TH AVE FL 16			ART UNIT	
NEW YORK, NY 10001-7708			PAPER NUMBER	
			2861	

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,825

Applicant(s)

SHIMOJI, MASAYA

Examiner

Huan H. Tran

Art Unit

2861

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18 is/are allowed.
- 6) ☒ Claim(s) 19-24 is/are rejected.
- 7) ☒ Claim(s) 3,4,7-9,12-14,16-18 and 21-23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. Claims 3, 4, 7, 8, 9, 12, 13, 14, 16, 17, 18, 21, 22, 23 are objected to because of the following informalities:

Claims 3, 4, 7-9, 12-14, 16-18 and 21-23, "heating dram" should be changed to – heating drum--.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 19-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically the claims are directed to a computer program per se for controlling an image processor (a computer) to perform the functionalities recited. As noted in MPEP 2106 (IV)(B)(1)(a) "computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized"

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As set forth in the above-identified passage of the MPEP, since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process. A claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, is nonstatutory functional descriptive material.

Allowable Subject Matter

5. Claims 1-18 are allowed. Note the objection to claims 3, 4, 7, 8, 9, 12, 13, 14, 16, 17, 18 above.

6. The following is a statement of reasons for the indication of allowable subject matter: Prior art do not teach or suggest the claimed image processing apparatus/method that can provide more stable image formation since abnormal data can be removed by detecting temperature of the surface of the heating drum directly and stopping the formation of the calibration table when the temperature is out of a predetermined range (claims 5, 14 and dependent claims thereof).


Prior art also do not teach or suggest suggest the claimed image processing apparatus/method that can provide more stable image formation since abnormal data can be removed by counting the number of the image forming material developed within predetermined time and stopping the formation of calibration table for predetermined time when the number of developed image forming material is more than predetermined number (claims 1, 10 and dependent claims thereof).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huan H. Tran whose telephone number is (571) 272-2261. The examiner can normally be reached on at work on W-F from 6:30 to 5; T are telework days.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Talbott can be reached on (571) 272-1934. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Huan H. Tran
Primary Examiner
Art Unit 2861

hht
08/25/05